



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

*Boyd*

EPA Region 5 Records Ctr.



205962

MAIL 0 3 2000

REPLY TO THE ATTENTION OF:

C-14J

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Neil Weinfield, Esq.  
Bell, Boyd & Lloyd  
Three First National Plaza  
70 West Madison Street, Suite 3300  
Chicago, IL 60602

Re: Celotex AKA Forked Creek Site  
Wilmington, Illinois

Dear Mr. Weinfield:

Enclosed please find a signed and final Administrative Order by Consent that sets forth the agreement between Celotex Corp. and the United States Environmental Protection Agency (U.S. EPA) for the removal activities in the above referenced case.

Please note that commencement of the removal activities should take place no later than March 31, 2000. U.S. EPA requests that you inform Fred Bartman, the On-Site Coordinator for this matter, and me, of the removal start date. Mr. Bartman can be reached at (312) 886-0776.

If you have any questions or concerns, please call me immediately at (312) 886-6833.

Sincerely,

Eva Hahn  
Assistant Regional Counsel

Enclosure

bcc: Eva Hahn, ORC (C-14J)  
Fred Bartman, OSC (SE-5J)  
Beth Henning, OPRS (SE-5J)  
Bev Kush, OPRS (HSE-5J)  
John Maritote, EESS (SE-5J)  
Carol Ropski, EESS (SE-5J)  
Records Center (SMR-7J)  
ERB Read File  
Padmavati Klejwa, ORC (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF:	)	Docket No. V-W-94-C-242
	)	
FORKED CREEK SITE,	)	
a.k.a. CELOTEX SITE	)	ADMINISTRATIVE ORDER BY
	)	CONSENT PURSUANT TO
	)	SECTION 311 OF THE
RESPONDENT:	)	CLEAN WATER ACT,
	)	33 U.S.C. § 1321
CELOTEX CORPORATION	)	
	)	
	)	
	)	

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**I. JURISDICTION AND GENERAL PROVISIONS**

The United States Environmental Protection Agency ("U.S. EPA") and Celotex Corporation ("Celotex") are entering into this Order voluntarily. U.S. EPA is issuing this Order pursuant to the authority vested in the President of the United States by Section 311(c), (e) and (m) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(c), (e) and (m). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order 12777 (October 22, 1991), and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 2-85, 2-89, and 2-13, and to the Director of Superfund Division by a Regional Delegation, dated September 17, 1992.

This Order provides for performance of removal actions and reimbursement of response costs incurred by the United States in connection with certain real property located on the south bank of Forked Creek and the east bank of the Kankakee River in Wilmington, Illinois (as depicted in Exhibit A to the attached Work Plan which is incorporated into this Order by reference) (Site). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a facility in violation of § 311(b) of CWA, 33 U.S.C. § 1321(b).

Pursuant to Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B), U.S. EPA has notified the State of Illinois of the issuance of this Order.

Respondent's participation in this Order shall not constitute an admission of liability or of U.S. EPA's Findings of Facts or Conclusions of Law and Determinations contained in this Order, except in a proceeding to enforce the terms of this Order.

Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms. Respondent reserves the right to contest that it is, or at any given time was, the owner and/or operator of the Site in any subsequent proceeding, except in a proceeding to enforce the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms. Respondent reserves the right to contest that it is, or at any given time was, the owner and/or operator of the Site in any subsequent proceeding, except in a proceeding to enforce the terms of this order.

## **II. PARTIES BOUND**

This Order applies to and is binding upon U.S. EPA, and upon Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Celotex, including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order, unless the transferee accepts such responsibilities.

Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The Site is in Wilmington, Illinois, bordered on the north by Forked Creek, and on the west by the Kankakee River, and on the south and east by the boundaries as depicted in bold on Exhibit A to the attached Work Plan which is incorporated into this Order by reference. The geographic coordinates of the Site are latitude 41°18'76.8" N and longitude 88°08'95.5" W.

2. Celotex acquired the former plant located near the site in 1967 for the manufacture of roofing materials and builder's paper. Celotex ceased operations in the early 1980s. Celotex declared bankruptcy in 1990.

3. Residents of Wilmington made numerous complaints to the Illinois Environmental Protection Agency (IEPA) concerning the conditions of the plant near the Site. IEPA initiated a site inspection on November 3, 1994 to determine whether hazardous conditions were present.

4. On June 11, 1997, IEPA performed a follow-up inspection of the Site. During this inspection, black material that reached into the Kankakee River was observed. On September 8, 1997, the IEPA requested assistance from U.S. EPA.

5. On September 26, 1997, the U.S. EPA went to the Site to perform a site assessment. During the site assessment, the site assessment team observed two areas in the northwest section of the Site, adjacent to the Kankakee River, which were filled with petroleum-based materials similar to those used in roofing material manufacturing by Celotex. Bundles of shingles were observed half-buried along a portion of the south bank of Forked Creek. The extent of the petroleum-based material ran along portions of the southern bank of the Forked Creek and along portions of the eastern bank the Kankakee River as shown on Exhibit A. An oil sheen observed on the water surface adjacent to the asphalt material indicated an oil release. Tests conducted on sediment samples taken at the Site revealed elevated levels of total petroleum hydrocarbons (TPH) compared to background levels of TPH. In addition, pieces of the petroleum-based material were visually observed in the sediments of Forked Creek and the Kankakee River. All of these observations indicate that there is an ongoing oil release into the Forked Creek and the Kankakee River.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA has determined that:

1. The Site is an "onshore facility" as defined by Section 311(a)(10) of CWA, 33 U.S.C. § 1321(a)(10), and by Section 1001(24) of the Oil Pollution Act ("OPA"), 33 U.S.C. § 2701(24).
2. The Removal Area is that area which is indicated in Exhibit A.
3. The "Site River/Creek Bank" is the sloped ground between the normal low water marks of the Forked Creek and Kankakee River and the line or ridge of earth which contains the natural flow of these water courses (excluding episodic flooding), except the "Removal Area," within the Site as indicated in Exhibit A.

4. Respondent is a "person" as defined by Section 311(a)(7) of CWA, 33 U.S.C. § 1321(a)(7), and by Section 1001(27) of OPA, 33 U.S.C. § 2701(27).

5. For purposes of this order, Respondent is the "owner or operator" of the Removal Area as defined by Section 311(a)(6) of CWA, 33 U.S.C. § 1321(a)(6) and Section 1001(26) of OPA, 33 U.S.C. § 2701(26).

6. A "removal" as defined in Section 311(a)(8) of CWA, 33 U.S.C. § 1321(a)(8), and Section 1001(30) of OPA, 33 U.S.C. § 2701(30), is necessary at the Removal Area to minimize and mitigate threatened or actual damage to the public health or welfare.

7. An actual or threatened "discharge" as defined in Section 311(a)(2) of CWA, 33 U.S.C. § 1321(a)(2), and Section 1001(7) of OPA, 33 U.S.C. § 2701(7), and 40 C.F.R. § 110.1, is occurring, has occurred, may occur, or is threatened, at or from the Removal Area.

8. "Oil" as defined in Section 311(a)(1) of CWA, 33 U.S.C. § 1321(a)(1), and Section 1001(23) of OPA, 33 U.S.C. § 2701(23), is currently present at and around the Removal Area.

9. Forked Creek and the Kankakee River are "navigable waters" of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and Section 1001(21) of OPA, 33 U.S.C. § 2701(21).

10. Forked Creek and the Kankakee River are "natural resources" within the meaning of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300.5, and Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

11. "Natural resources", as defined in the NCP, 40 C.F.R. § 300.5, and Section 1001(20) of the OPA, 33 U.S.C. § 2701(20), may be affected by a discharge at or from the Removal Area.

12. The Removal Area may pose an imminent and substantial threat to the public health or welfare of the United States because of an actual or threatened discharge of oil from the Removal Area in violation of Section 311(b) of CWA, 33 U.S.C. § 1321(b).

13. The measures set forth in this Order are necessary to abate, minimize, stabilize, mitigate or eliminate the discharge or threat of a discharge of oil at or from the Removal Area.

14. Under Section 1002(b)(1) of OPA, 33 U.S.C. § 2702(b)(1), Respondents are liable to the United States Government for the

removal costs incurred by the United States in connection with the Removal Area.

#### V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent has retained, and U.S. EPA has approved, a contractor, Hazchem Environment Corporation, to implement the removal actions required in this Order. Respondent has notified U.S. EPA of the name and qualifications of such contractor.

Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 7 business days prior to commencement of such work. U.S. EPA retains the right to disapprove any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within 7 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 7 business days of U.S. EPA's disapproval.

The Respondent has designated, and U.S. EPA has approved Lecil Colburn as the Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Lecil Colburn can be contacted at Celotex Corporation, 4010 Boy Scout Boulevard, Tampa, Florida 33607, telephone (813) 873-4369, fax (813) 873-4294. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any change in the Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 7 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 7 business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any written notice or written communication from U.S. EPA relating to this Order shall constitute receipt by Respondent.

The U.S. EPA has designated Fred Bartman of the Emergency Response Branch, Superfund Division, Region 5, as its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Order to the OSC at U.S. Environmental Protection Agency, Emergency Response Section, 77 West Jackson Boulevard, Mailcode SE-5J, Chicago Illinois 60604-3590, by certified, express mail, or commercial courier service. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible).

U.S. EPA and Respondent shall have the right, subject to the preceding paragraph, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

## 2.0 Work to Be Performed

### a. Respondent shall perform the following actions in the Removal Area:

1. Prepare and implement the site health and safety plan attached to this Order;
2. Secure the Removal Area to the extent practicable for the duration of the removal activities;
3. In accordance with the approved Work Plan which is incorporated into the Order by reference, remove and dispose of, and/or grade and cover, the visible deposits of petroleum-based material on the river bank within the Removal Area;
4. Backfill all excavated areas;
5. Stabilize the excavated river and creek banks with riprap or other appropriate material to minimize erosion;
6. Transport and dispose of all waste materials in full compliance with U.S. EPA's off-site Rule at 40 C.F.R. § 300.310 and Illinois law; and
7. Perform all work as described above in accordance with state and federal regulations.



- b. Respondent must perform the following actions within the Site River/Creek Bank:
1. Prepare and implement the site health and plan attached to this Order.
  2. Secure the Site River/Creek Bank to the extent practicable for the duration of the removal activities.
  3. In accordance with the approved Work Plan, which is incorporated into this Order by reference, remove from the surface of the Site River/Creek Bank pieces of petroleum-based debris that are greater than one cubic inch and less than one cubic foot (Debris).
  4. Dispose of the Debris in the Removal Area, or transport and dispose of the Debris in full compliance with the U.S. EPA's off-site rule at 40 C.F.R. § 300.440 and Illinois law.
  5. If, as a result of Post Removal Site Control as required by paragraph 2.4, Respondent discovers that Debris (as described in Section 2.0.b.3), has been exposed on the Site River/Creek Bank, take additional actions as are consistent with this paragraph 2.0.b.

#### 2.1 Work Plan and Implementation

Attached is a Work Plan that has been approved by U.S. EPA which provides a description of, and an expeditious schedule for, the activities required by this Order.

Respondent shall implement the Work Plan as provided therein. The Work Plan and the schedule shall be fully enforceable under this Order. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.

Respondent shall not commence or undertake any removal actions at the Removal Area without prior U.S. EPA approval

#### 2.2 Health and Safety Plan

Attached is a plan for the protection of the public health and safety during performance of on-site work under this Order, that has been approved by U.S. EPA. This plan complies with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The approved Work Plan, the

schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved work plan. Respondent shall not commence or undertake any future removal actions at the Removal Area without prior U.S. EPA approval.

### 2.3 Quality Assurance and Sampling

Respondent shall collect three water samples 50 feet offshore from the east bank of the Kankakee River: one upstream, one downstream and one across from the Site, and analyze such samples for total petroleum hydrocarbons.

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Within 10 business day after the effective date of this Order, the Respondent shall develop and submit a plan for U.S. EPA review and comment that ensures the sampling and laboratory analysis complies with U.S. EPA QA/QC guidance. Respondent shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

### 2.4 Post-Removal Site Control

Respondent must conduct post removal site control, consistent with Section 300.415(1) of the NCP, 40 C.F.R. § 300.415(1), and OSWER Directive 9360.2-02, by (1) inspecting the Site River/Creek Bank and removing Debris from the surface of the Site River/Creek Bank, and (2) inspecting and repairing any damage to the cover of the Removal Area. Such post removal site control shall occur once in each of the following calendar years: 2000, 2002, 2003, 2005, and 2006. Respondent must provide U.S. EPA with documentation of all post-removal site control arrangements and actions.

### 2.5 Reporting

Respondent shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to sections 2.0 and 2.3 of this Order, beginning 30 calendar days after the effective date of this Order and continuing until submission of the final report, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period,

including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

If Respondent is the owner of the Site, Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Removal Area, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

The OSC may request bi-weekly reports when the activities at the site warrant a higher reporting frequency.

## 2.6 Final Report

Within 60 calendar days after completion of construction and implementation of the removal actions required under sections 2.0 and 2.3 of this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 C.F.R. § 300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits), and a description of any releases as described below, in section 6.

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

## 3. Access to Property and Information

During the time work is being performed under the Work Plan, and emergencies, Respondent shall provide or obtain access to the

Removal Area and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Removal Area and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA, USCG, United States Fish and Wildlife Service employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. During regular business hours and emergencies, these individuals shall be permitted to move freely at the Removal Area and appropriate off-site areas in order to conduct actions which U.S. EPA determines to be necessary. Respondent shall submit to U.S. EPA the results of all sampling or tests and all other data generated by Respondent or its contractor, or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

#### 4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information relating to work performed under this Order for three years following completion of the removal actions required by this Order. At the end of this three year period and at least 60 days before any document or information is destroyed, Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the three year period at the written request of U.S. EPA.

#### 5. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations.

## 6. Emergency Response and Notification of Discharges

If any incident, or change in Removal Area conditions, during the activities conducted pursuant to paragraph 2.0.a of this Order causes or threatens to cause a discharge of oil and/or hazardous substances from the Removal Area or an endangerment to the public health, welfare, or the environment, the Respondent must immediately take all appropriate action to prevent, abate or minimize such discharge or endangerment caused or threatened by the discharge.

Respondent must also immediately notify the OSC or, in the event of his unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region V at (312) 353-2318, of the incident or Removal Area conditions. If Respondent fails to respond, U.S. EPA may respond to the discharge or endangerment and reserves the right to recover costs associated with that hazardous substance response. USCG reserves the right to recover costs associated with that oil response. Respondent must submit, in its Final Report required under Section V, Subsection 2.6, of this Consent Order, a description of the events that occurred and the measures taken to mitigate any discharge or endangerment caused or threatened by the discharge.

For any releases occurring at the Site during the activities conducted pursuant to paragraph 2.0 of this Order, that are not related to the cleanup activities required under this Order, Respondent must immediately notify the OSC or, in the event of his unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region V at (312) 353-2318, of the incident or Removal Area conditions. In addition, Respondent must, within 7 days of such a release, submit a written report to U.S. EPA within 7 days of such discharge, setting forth the events that occurred and the measures taken to mitigate any discharge or endangerment caused or threatened by the discharge. Respondent shall also comply with any other applicable notification requirements, including, if applicable, those in CWA Section 311, 33 U.S.C. § 1321, CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

## 7. Additional Work

In the event U.S. EPA or the Respondent determines that additional work, not otherwise specifically included in the Work Plan but Consistent with this Consent Order, is necessary to implement the Work Plan, notification of additional work shall be provided to all parties and implemented by Respondent.

Additional work determined to be necessary by Respondent shall be subject to the written approval of U.S. EPA. Such work shall be completed by Respondent in accordance with the standards and specifications determined or approved by EPA.

Additional work determined by U.S. EPA to be consistent with this Consent Order, but not otherwise specifically included in the Work Plan, shall be incorporated into the Work Plan. However, if the consistency of such additional work with this Order is disputed by Respondent, Respondent may invoke its right under Section VIII, Dispute Resolution, of this Order. For additional work agreed to by Respondent or resolved under Section VIII, Respondent shall propose and submit a schedule for additional work for U.S. EPA approval. U.S. EPA may modify or determine the schedule for additional work. Such additional work must be performed in a manner consistent with the purposes and objectives of this Consent Order.

#### **VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by the Order or to direct any other response action undertaken by U.S. EPA. Absence of the OSC from the Removal Area shall not be cause for stoppage of work unless specifically directed by the OSC.

#### **VII. REIMBURSEMENT OF COSTS**

The United States will submit to Respondent a bill(s) and accounting(s) of removal costs incurred by the U.S. Government, on or after the date which this Order is signed by U.S. EPA, with respect to this Order. Removal costs shall consist of all costs, including indirect costs, incurred by U.S. EPA, its employees, agents, contractors, consultants and other authorized and/or designated representatives in connection with U.S. EPA's oversight and or/ performance of the Work.

Respondent shall, within 30 calendar days of receipt of a bill and accounting, remit a check for the amount of those costs made payable to the United States Coast Guard, or make such payment via electronic transfer, as directed by the U.S. EPA Project Coordinator. Interest at a rate established in 40 C.F.R. § 102.13, pursuant to 40 C.F.R. § 13.11(a), shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period. Checks shall specifically reference the Site and FPN (02-3010) and be sent to:

United States Coast Guard - Oil Pollution  
Re: FPN 02-3010  
P.O. Box 7777-W7615  
Philadelphia, Pennsylvania 19175-7615

Prior to payment, Respondent may dispute all or part of a bill for removal costs submitted under this Order, if Respondent alleges that U.S. EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to the U.S. Coast Guard as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party in the dispute shall receive the amount upon which it prevailed from the escrow funds plus interest within 30 days after the dispute is resolved.

#### **VIII. DISPUTE RESOLUTION**

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any U.S. EPA action taken pursuant to this Order, including billings for response costs, the Respondent shall notify U.S. EPA in writing of its objection within 30 calendar days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which Respondent relies (the "Statement of Position").

U.S. EPA and Respondent shall within 15 calendar days of U.S. EPA's receipt of the Respondent's Statement of Position, attempt to resolve the dispute through formal negotiations (negotiation period). The negotiation period may be extended at the sole discretion of U.S. EPA. U.S. EPA's decision regarding an extension of the negotiation period shall not constitute a U.S. EPA action subject to dispute resolution or a final Agency action giving rise to judicial review.

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph.

Any agreement reached by the parties pursuant to this Section shall be in writing, signed by all parties, and shall upon the signature by the parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the negotiation period, U.S. EPA will issue a written decision on the dispute to the Respondent. This decision may be appealed to the Division Director of the Superfund Division, Region 5, for a final determination based upon the record developed and consistent with the terms and objectives of this Order. The decision of U.S. EPA shall be incorporated into and become an enforceable element of this Order upon Respondent's receipt of the U.S. EPA decision regarding the dispute.

Respondent's obligations under this Order for disputed matters shall be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs, consistent with appropriate extensions of time or schedule modifications, where necessary. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

Should Respondent not comply with U.S. EPA's decision, U.S. EPA may move to enforce this order in United States District Court and Respondent may raise, in judicial forum, any defenses raised in the Dispute Resolution proceedings.

#### **IX. FORCE MAJEURE**

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondent shall notify U.S. EPA orally within 48 hours after Respondent becomes aware of any event that Respondent contends constitutes a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures.



Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

#### **X. STIPULATED AND STATUTORY PENALTIES**

For each day, or portion thereof, that Respondent fails to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

	<u>Penalty per violation per day and Period of Noncompliance</u>		
	<u>1 - 15 DAYS</u>	<u>16 - 30 DAYS</u>	<u>OVER 30 DAYS</u>
Failure to Submit the Work Plan, Site Safety and Health Plan, Sampling and Analysis Plan, the Schedule of Work to be Performed or the Post-Removal Site Control Plan	\$750	\$1000	\$2000
Failure to Commence Implementation of the Work Plan	\$750	\$1000	\$2000
Failure to Meet any Scheduled Deadline in the Work Plan	\$750	\$1000	\$2000
Failure to Submit Monthly Reports	\$100	\$500	\$1200

Failure to Submit Final Report	\$500	\$1000	\$2500
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Failure to Comply with any other provisions this Order	\$500	\$1000	\$2500
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Upon receipt of written demand by U.S. EPA, Respondent shall make payment to U.S. EPA within 20 days and interest shall accrue on late payments in accordance with Section VII of this Order (Reimbursement of Costs).

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligations to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If Respondent prevails upon resolution, Respondent shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may defer or waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a deferral or waiver must be made in writing.

Should Respondent violate this Order or any portion hereof, after 15 days notice to Respondent, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 311(c) of CWA, 33 U.S.C. § 1321(c), and/or may seek judicial enforcement of this Order pursuant to Section 311(e) of CWA, 33 U.S.C. § 1321(e).

#### **XI. RESERVATION OF RIGHTS**

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened discharge of oil at or from the Removal Area. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to order the Respondent in the future to perform additional activities pursuant to the Clean Water Act or any other applicable law.

## **XII. OTHER CLAIMS**

Nothing in this Order shall constitute or be construed as a discharge from any claim, cause of action or demand in law or equity against any person, firm, partnership, venturer or corporation not bound by this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, discharge, or disposal of any oil, solid wastes, pollutants, hazardous substances or contaminants found at, taken to, or taken from the Removal Area or for any other liability for costs or expenses related to the Work.

## **XIII. INDEMNIFICATION**

Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, gross negligence of Respondent and Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order. Nothing in this Order, however, requires indemnification by Respondent for any claim or cause of action against the United States based on negligent action taken solely and directly by U.S. EPA (not including oversight or approval of plans or activities of the Respondent).

## **XIV. MODIFICATIONS**

Modifications consistent with this Order to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties. Respondent reserves its right to invoke Dispute Resolution, Section VIII of this Consent Order, if it believes that the OSC's modifications to any plan or schedule are not consistent with this Consent Order.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Such approval shall not be unreasonably withheld.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XV. NOTICE OF COMPLETION**

When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), U.S. EPA will provide notice to the Respondent. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modifies the Work Plan if appropriate to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order. Respondent reserves the right to invoke Dispute Resolution, Section VIII of this Consent Order, if it believes that EPA's requested modifications are inconsistent with this Consent Order.

#### **XVI. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

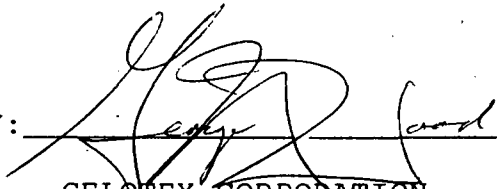
#### **XVII. EFFECTIVE DATE**

This Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5.

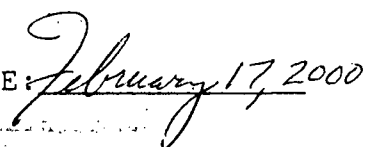
**XVIII. SIGNATORIES**

Each undersigned representative of a signatory to this Administrative Order by Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

BY: \_\_\_\_\_

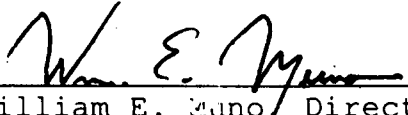
  
CELOTEX CORPORATION  
P.O. Box 31602  
Tampa, Florida 33631-3602

DATE: \_\_\_\_\_

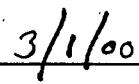
  
February 17, 2000

IT IS SO ORDERED AND AGREED

BY: \_\_\_\_\_

  
William E. Mano, Director  
Superfund Division  
United States Environmental  
Protection Agency  
Region 5

DATE: \_\_\_\_\_

  
3/1/00



# **HAZCHEM ENVIRONMENTAL CORPORATION**

ENVIRONMENTAL MANAGEMENT & REMEDIATION SERVICES

## **REMOVAL OF PETROLEUM BASED MATERIAL AND CONSTRUCTION OF AN ENGINEERED BARRIER**

**At**

**FORKED CREEK SITE  
Wilmington, Illinois**

**PREPARED FOR:**

**Celotex Corporation  
4010 Boy Scout Blvd.  
Tampa, Florida  
33607**

**By:**

**HazChem Environmental Corporation  
1115 West National Avenue  
Addison, Illinois  
60101**

**November 8, 1999**

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## 1.0 SITE DESCRIPTION

The "Site" is located in Wilmington, Illinois in Southwest Will County and is bordered on the west by the Kankakee River, on the north by Forked Creek, and on the south and east by the boundaries as depicted in bold in Exhibit A. The "Removal Area" is that area within the site, which is so indicated in Exhibit A. The "Site River/Creek Bank" is the sloped ground between the normal low water marks of Forked Creek and the Kankakee River, and the line or ridge of earth which contains the natural flow of these water courses (excluding episodic flooding), except the "Removal Area," within the Site as indicated in Exhibit A. The geographic coordinates of the Site are latitude 41 degrees 18'76. 8" North and longitude 87 degrees 08'95. 5" West.

## 2.0 SCOPE OF WORK

### 2.1 Work Schedule

Work at the Site will commence, weather permitting, within 30 days following issuance of U. S. EPA's Administrative Order of Consent. Work at the Site will be completed, weather permitting, within 30 days after work at the Site commences.

### 2.2 Site Preparation

The Site River/Creek Bank and Removal Area will be secured by a chain-link locked fence during the removal activities. Access to the Site will be limited to Celotex, HazChem, Federal/State EPA personnel and their contractors.

Forked Creek and the Kankakee River will be protected from activities in the Removal Area using a weighted sea curtain boom with 8" diameter X 10' long inner absorbent booms to prevent any petroleum based materials from entering the waterways near the Removal Area. The inner booms will be maintained and replaced as required.

### 2.3 Excavation and Removal of Petroleum Based Material

Two relatively large visible deposits of petroleum based material in the "Removal Area" (refer to Exhibit A) will be excavated using a CAT 320 Trackhoe. The estimated volume of these deposits is 240 cubic yards. The excavated materials will be stored on visqueen for subsequent loading into dump trucks using a CAT 966 Loader.

Pieces of petroleum based debris that are greater than one cubic inch and less than one cubic foot ("Debris") will be removed from the "Site River/Creek Bank" area as shown in Exhibit A. This Debris will be removed manually using rakes and/or sieves and placed on visqueen for disposal.



All petroleum based material will be transported and disposed of in full compliance with U. S. EPA's off-site Rule at 40 C. F. R. Section 300.440 and Illinois law. Dump trailers will be used for proper disposal at a fully licensed and permitted facility.

## **2.4 Site Restoration**

The two areas designated as the "Removal Area" will be backfilled with clean fill material (clay, stone, soil, etc.). These two areas will be covered with a 30 mil impervious synthetic liner that will extend approximately 15 feet on each side of the excavations on to the Site River/Creek Bank. These areas will then be stabilized with riprap and other appropriate material to minimize erosion.

## **2.5 Quality Assurance and Sampling**

Three water samples will be collected 50 feet offshore from the east bank of the Kankakee River: one upstream, one downstream and one across from the Site. These samples will be analyzed for total petroleum hydrocarbons at a fully accredited laboratory. All sampling and analytical procedures will conform to U. S. EPA requirements.

## **2.6 Post-Removal Site Control**

Post removal site control will be conducted, consistent with Section 300.415(1) of the NCP, 40 C. F. R. 300.415(1), and OSWER Directive 9360.2-02, by inspecting the Site River/Creek Bank and removing Debris from the surface of the Site River/Creek Bank, and (2) inspecting any repairing any damage to the cover of the Removal Area. Such post removal site control shall occur once in each of the following calendar years: 2000, 2002, 2003, 2005, and 2006.

# **3.0 SITE HEALTH AND SAFETY PLAN**

## **3.1 Scope of Work**

HazChem will provide all personnel, materials and equipment to complete the project described in Section 2.0. The following is a list of equipment that HazChem proposes to use for this project.

1. (1) One cargo van
2. Sea curtain boom and absorbent booms.
3. (1) One excavator; one crawler/loader

4. Dump trucks
5. Personal protective equipment
6. (1) One John boat

### 3.2 Standard Work Limitations

It is anticipated that protective construction equipment (steel toe shoes, hardhat) will be sufficient for the project. It is also anticipated that the material being excavated will be certified as non-hazardous, non-special waste. A portable photo-ionization detector will be used to monitor air quality. Level C PPE will be available and used should P.I.D. readings be in excess of 10 ppm over ambient air concentrations. Air samples will be taken periodically, but only when fuel generated equipment is shut down.

A Johnboat will be required to secure booms along the Kankakee River and collect QA samples. This will be accomplished using a (2) two man crew equipped with life jackets.

### General Work Limitations

1. Access is limited to designated personnel and must be approved by the Environmental, Safety and Health Officer (ESHO), or the Project Coordinator.
2. Personnel taking prescription drugs must obtain a written release from their physician prior to starting the work.
3. All personal protective equipment shall be inspected prior to use.
4. All personnel must be properly trained before entering the site.

### 3.3 Emergency Contingency Plan

1. A mobile telephone will be located at the work site in the possession of the ESHO.
2. First Aid as well as other emergency supplies will be available at the work site.
3. The City of Wilmington utilizes 911 for emergencies. Use of this number from any telephone will summon police, fire and ambulance.

4. For non-medical project needs call the designated site contact and ask for assistance.

- a. Explain what assistance is required
- b. Give exact location and the preferred point of entry to the site.

5. The ESHO shall be assigned to meet police, fire and ambulance to guide them to the emergency site.

6. The strip map to the nearest hospital is attached.

- a. If on-site personnel will transport the injured person, the hospital emergency department shall be notified prior to departure.
- b. Explain nature of injury/illness.

### 3.4 Personnel Roles and Job Descriptions

Below is a listing of personnel who may be assigned to the project and the tasks which the personnel may be designated to perform.

#### HazChem Personnel

- Dave Lambert-Project Manager

##### DESIGNATED TASKS

Project Oversight

Environmental Safety and Health Officer

Monitoring

Field Labor

##### TRAINING

HAZWOPER 40 Hour

- Keith Campbell-Project Manager

##### DESIGNATED TASKS

Field Labor

Client Contact

Logging of Data

##### TRAINING

HAZWOPER 40 Hour

- Harry Eiler-CHMS-Principal

**DESIGNATED TASKS**

Project Coordinator

Agency Contact

Client Contact

Report Preparation

**TRAINING**

HAZWOPER 40 Hour

Certified Hazardous Materials Supervisor

- Bruce Sroka-Field Technician

**DESIGNATED TASKS**

Field Labor

Monitoring

Logging of Data

**TRAINING**

HAZWOPER 40 Hour

- Locally Hired Field Laborers

**DESIGNATED TASKS**

Field Labor

**TRAINING**

ESHO to determine training requirements based on function.

**Celotex Personnel**

- Lecil Colburn-Project Manager

**U. S. EPA Personnel**

- Fred Bartman-On-Scene Coordinator

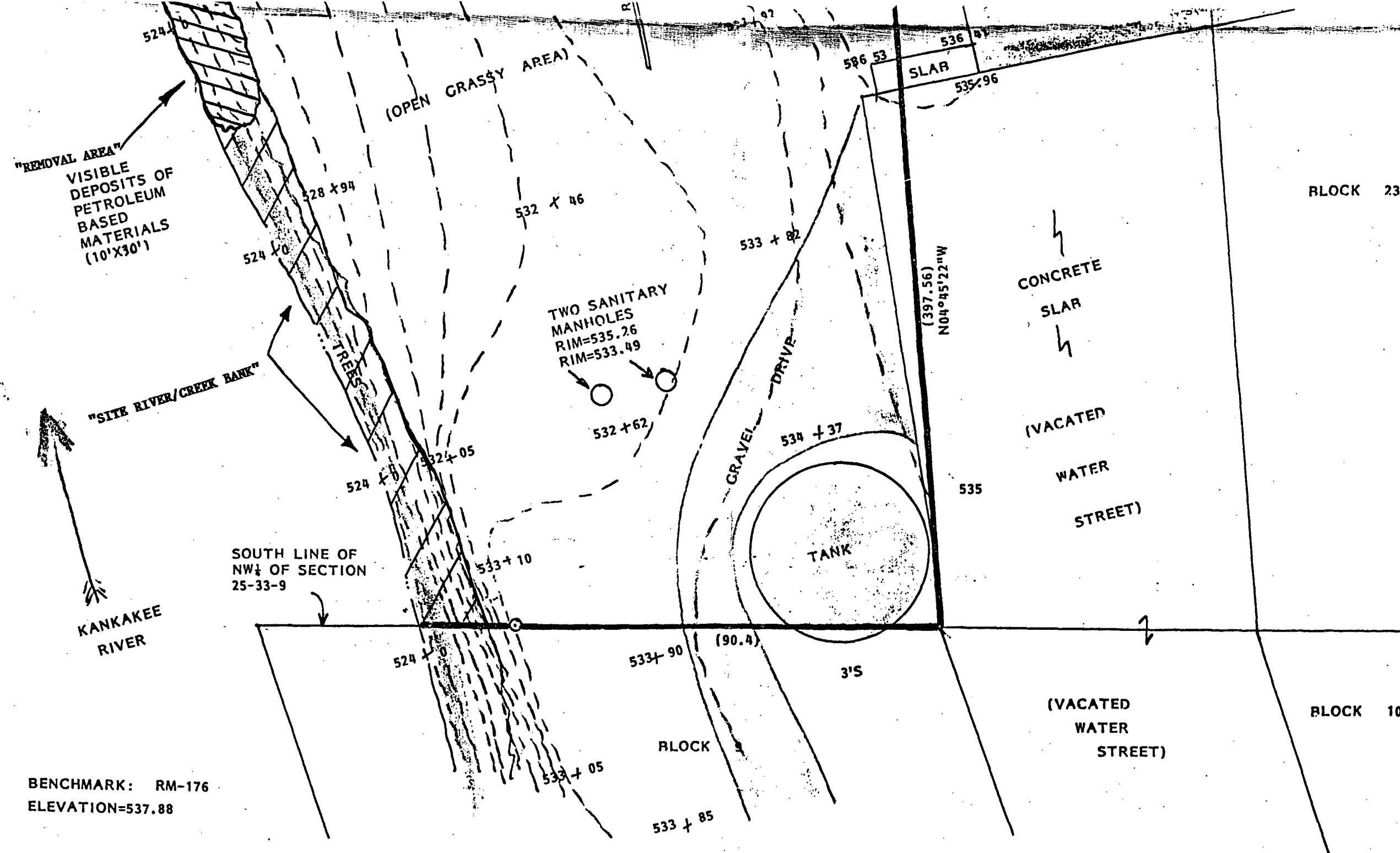
### **3.5 Personal Protective Equipment**

Work will be conducted at the site with PPE consisting of long cotton pants, long sleeve cotton shirt, hardhat, steel toe and shank work boots. Hearing protection shall be used in the presence of heavy equipment or loud noise. Level C PPE will be available and used as directed by the ESHO.

### **3.6 Work Zones**

#### **Work Area**

The work area will be confined to the Site identified in Exhibit A unless designated by the client and the contractor.



STATE OF ILLINOIS  
COUNTY OF WILL

THIS IS TO CERTIFY THAT I, AN ILLINOIS LAND SURVEYOR, HAVE SURVEYED THE PROPERTY DESCRIBED IN THE ABOVE CAPTION(S) AS SHOWN BY THE ANNEXED PLAT WHICH IS A CORRECT AND TRUE REPRESENTATION OF SAID SURVEY.

GIVEN UNDER MY HAND AND SEAL AT JOLIET, ILLINOIS, THIS ...  
...19TH...DAY...OF...APRIL...A.D. 19...99...

*Scott Neite*  
ILLINOIS LAND SURVEYOR NO. 2275

BUILDINGS LOCATED AS SHOWN ON THIS .....  
..... DAY OF ....., A.D. 19.....

ILLINOIS LAND SURVEYOR NO. 2275

COMPARE DESCRIPTION AND POINTS BEFORE BUILDING AND REPORT ANY APPARENT DIFFERENCE TO THE SURVEYOR.

25-33-9  
REFER TO DEED OR GUARANTEE POLICY FOR BUILDING LINE RESTRICTIONS NOT SHOWN ON PLAT OF SURVEY

**REITER & ASSOCIATES**  
LAND SURVEYING AND CIVIL ENGINEERING  
321 W. MAPLE ST., NEW LENOX, IL. 60451  
Phone 815-462-4100 708-754-1074

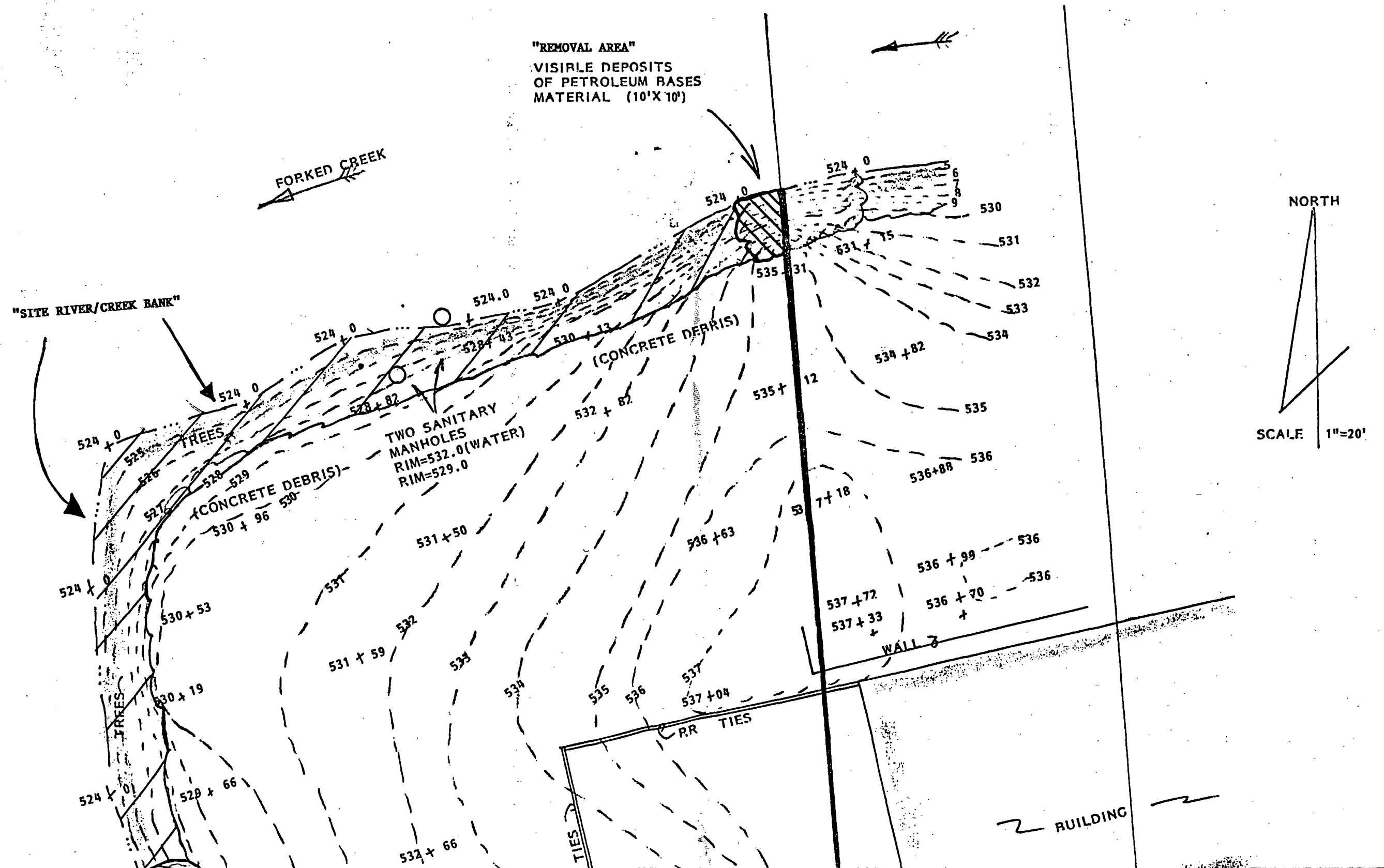
Order NO. 99-74A .....  
File NO. ....  
For CELOTEX CORPORATION "SITE RIVER/CREEK BANK" 4010 BOY SCOUT ROAD, TAMPA, FLA 33607-5750.

☒ Found Iron Stake  
☐ Found Stone  
☐ Found Iron Stake  
☐ Found Stone

Drawn 4-26-99  
 Checked SMR  
 Scale 1" = 20'  
 "REMOVAL AREA"

# PLAT OF SURVEY

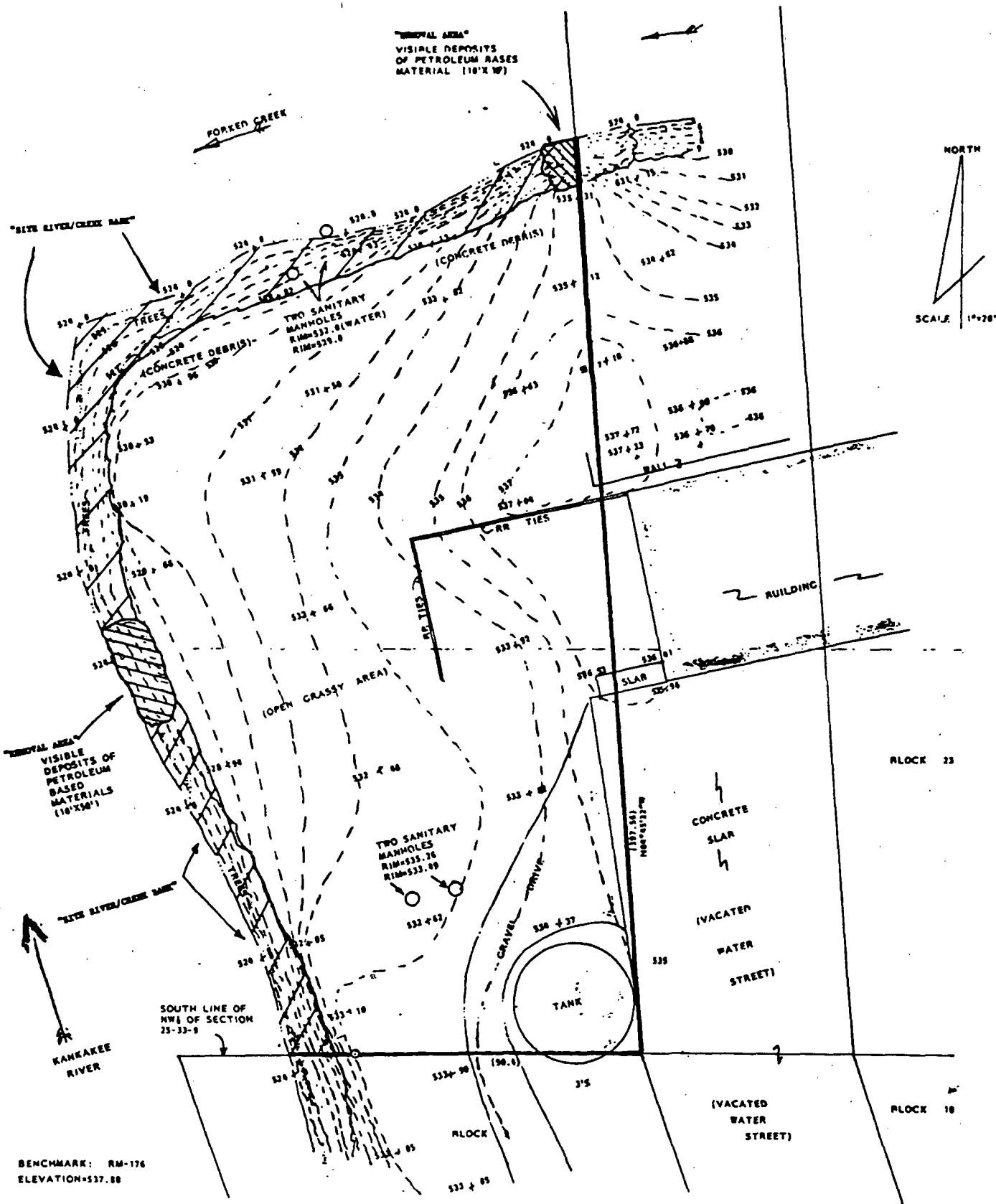
EXHIBIT A



# PLAT OF SURVEY

EXHIBIT A

## EXHIBIT A



BENCHMARK: RM-176  
ELEVATION=537.88

STATE OF ILLINOIS  
COUNTY OF WILL  
S.S.  
THIS IS TO CERTIFY THAT I, AN ILLINOIS LAND SURVEYOR, HAVE SURVEYED  
THE PROPERTY DESCRIBED IN THE ABOVE CAPTIONED AS SHOWN BY THE ABOVE  
PLAT WHICH IS A CORRECT AND TRUE REPRESENTATION OF LAND SURVEY.  
GIVEN UNDER MY HAND AND SEAL OF OFFICE, ILLINOIS, THIS  
...JSTH... DAY...OF...APRIL... A.D. 19...  
ILLINOIS LAND SURVEYOR NO. 2275

BUILDINGS LOCATED AS SHOWN ON THIS  
...DAY OF... A.D. 19...  
ILLINOIS LAND SURVEYOR NO. 2275  
COMPARE DESCRIPTION AND POINTS BEFORE BUILDING  
AND REPORT ANY APPARENT DIFFERENCE TO  
THE SURVEYOR.

25-33-8  
REFER TO REAR OR GUARANTEE POLICY FOR BUILDING LINE RESTRICTIONS NOT SHOWN ON PLAT OF SURVEY

**REITER & ASSOCIATES**  
LAND SURVEYING AND CIVIL ENGINEERING  
321 W. MAPLE ST., NEW LENOX, IL 60451  
Phone 815- 462-4766 708-764-1076

Order NO. 25-74A  
BY REC.  
For CELOTEX CORPORATION "SITE RIVER/CREEK BANK"  
4010 BOY SCOUT ROAD, TAMPA, FLA 33607-5750

© Found here  
© Found here  
Checked: SMR  
Date: 6-26-99  
Scale: 1" = 20'

REMOVAL AREA



